

MONTANA LEGISLATIVE HISTORY

Chapter 554 19 85

Bill H _____ S 451 Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 3/25 _____ c

_____ c

_____ c

_____ c

Date Out 3/25 _____ c

S. Committee on Judiciary

Hearing Date(s) 2/21 _____ c

2-23 _____ c

_____ c

_____ c

DATE OUT 2/23

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

SENATE FINAL STATUS

2/22	HEARING		
2/22	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/26	2ND READING PASS	46	3
2/27	3RD READING PASS	47	3
TRANSMITTED TO HOUSE			
3/06	REFERRED TO BUSINESS & LABOR		
3/21	HEARING		
3/22	COMMITTEE REPORT-BILL CONCURRED		
3/23	2ND READING CONCURRED	88	2
3/26	3RD READING CONCURRED	98	1
RETURNED TO SENATE			
3/30	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/05	TRANSMITTED TO GOVERNOR		
4/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 406	EFFECTIVE DATE: 10/01/85	

SB 451 INTRODUCED BY MAZUREK
 PROVIDES FOR THE FAIR AND PROPER TREATMENT OF CRIME
 VICTIMS AND WITNESSES

2/19	INTRODUCED		
2/20	REFERRED TO JUDICIARY		
2/21	HEARING		
2/23	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/26	2ND READING PASS	49	0
2/27	3RD READING PASS	50	0
TRANSMITTED TO HOUSE			
3/06	REFERRED TO JUDICIARY		
3/25	HEARING		
3/25	COMM REPORT-BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	92	2
4/01	3RD READING CONCURRED	100	0
RETURNED TO SENATE WITH AMENDMENTS			
4/03	2ND READING AMENDMENTS CONCURRED	50	0
4/05	3RD READING AMENDMENTS CONCURRED	45	0
4/12	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 554	EFFECTIVE DATE: 10/01/85	

SB 452 INTRODUCED BY ECK, BARDANOUVE, COHEN, ET AL.
 EMPLOYEE AND COMMUNITY HAZARDOUS CHEMICAL
 INFORMATION ACT

2/19	INTRODUCED		
2/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/20	FISCAL NOTE REQUESTED		
2/21	HEARING		
2/23	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/26	FISCAL NOTE RECEIVED		
2/26	2ND READING PASS	49	0
2/27	3RD READING PASS	50	0

SENATE BILL NO. 451
INTRODUCED BY MAZUREK

IN THE SENATE

February 20, 1985	Introduced and referred to Committee on Judiciary.
February 23, 1985	Committee recommend bill do pass as amended. Report adopted.
February 25, 1985	Bill printed and placed on members' desks.
February 26, 1985	Second reading, do pass. Considered correctly engrossed.
February 27, 1985	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 7, 1985	Introduced and referred to Committee on Judiciary.
March 25, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 30, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in. Returned to Senate with amendments.

IN THE SENATE

April 1, 1985	Received from House.
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April 3, 1985

Second reading, amendments
concurred in.

April 5, 1985

Third reading, amendments
concurred in. Ayes, 45; Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. 451
2 INTRODUCED BY *Thayer*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FAIR
5 AND PROPER TREATMENT OF VICTIMS AND WITNESSES IN THE
6 CRIMINAL JUSTICE SYSTEM; REQUIRING THE PROVISION OF SERVICES
7 AND ASSISTANCE TO CRIME VICTIMS AND WITNESSES; GRANTING
8 RULEMAKING AUTHORITY TO THE ATTORNEY GENERAL; AND PROVIDING
9 AN IMMEDIATE EFFECTIVE DATE."

10
11 WHEREAS, without the cooperation of victims and
12 witnesses, the criminal justice system would cease to
13 function; yet with some exceptions, these individuals are
14 either ignored by the criminal justice system or simply used
15 as a means to identify and punish offenders; and

16 WHEREAS, all too often the victim of a serious crime is
17 forced to suffer physical, psychological, or financial
18 hardship, first as a result of the criminal act, and then as
19 a result of contact with a criminal justice system
20 unresponsive to the real needs of such victim; and

21 WHEREAS, while the defendant is provided with counsel
22 who can explain both the criminal justice process and the
23 rights of the defendant, the victim or witness has no
24 counterpart and is usually not even notified when the
25 defendant is released on bail, the case is dismissed, a plea

1 to a lesser charge is accepted, or a court date is changed;
2 and

3 WHEREAS, the victim and witness who cooperate with the
4 prosecutor often find that they must share the pretrial
5 waiting room with the defendant or his family and friends;
6 and

7 WHEREAS, the victim may lose valuable property to a
8 criminal only to lose it again for long periods of time to
9 law enforcement officials until the trial, and sometimes
10 until all appeals are over; and many times the property is
11 damaged or lost, which is particularly stressful for the
12 elderly or the poor; and

13 WHEREAS, the majority of serious crimes fall under the
14 jurisdiction of state and local law enforcement agencies.

15 THEREFORE, the Legislature of the State of Montana
16 finds it appropriate to provide for the fair and proper
17 treatment of crime victims and witnesses in the criminal
18 justice system.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Purpose. The legislature declares that the
22 purposes of [this act] are to:

23 (1) protect the role of crime victims and witnesses in
24 the criminal justice process;

25 (2) assure that victims and witnesses of crime receive

1 fair and proper treatment from law enforcement agencies and
2 prosecutors; and

3 (3) provide a standard of conduct governing the
4 treatment of victims and witnesses in criminal cases.

5 Section 2. Services to victims of crime. Law
6 enforcement personnel shall assure that a victim of a crime
7 routinely receives emergency social and medical services as
8 soon as possible and that such victim is given information
9 on the following:

10 (1) the availability of crime victim compensation;

11 (2) community-based victim treatment programs;

12 (3) the role of the victim in the criminal justice
13 process, including what he can expect from the system, as
14 well as what the system expects from the victim; and

15 (4) stages in the criminal justice process of
16 significance to a crime victim and the manner in which
17 information about such stages may be obtained.

18 Section 3. Notification of available protective
19 services. Law enforcement officers and prosecuting attorneys
20 shall routinely provide a victim or witness information on
21 the availability of services to protect the victim or
22 witness from intimidation.

23 Section 4. Scheduling changes. (1) As soon as
24 practicable, the prosecuting attorney shall notify a victim
25 or witness of any scheduling changes that may affect the

1 appearance of the victim or witness at a criminal justice
2 proceeding that he is scheduled to attend.

3 (2) For the purpose of providing notification, the
4 prosecuting attorney shall have available a system for
5 promptly alerting a victim or witness that a scheduling
6 change has been made.

7 Section 5. Prompt notification to victims and
8 witnesses of felony offenses. (1) A person described in
9 subsection (2) who provides the appropriate official with a
10 current address and telephone number must receive prompt
11 advance notification, if possible, of proceedings relating
12 to his case, including:

13 (a) the arrest of an accused;

14 (b) the initial appearance of an accused before a
15 judicial officer;

16 (c) the release of the accused pending judicial
17 proceedings; and

18 (d) proceedings in the prosecution of the accused,
19 including entry of a plea of guilty, the setting of a trial
20 date, the sentencing schedule, the sentence imposed, the
21 term of imprisonment, if imposed, and the release of the
22 accused from imprisonment.

23 (2) A person entitled to notification under subsection
24 (1) must be a victim or witness of a felony offense, a
25 relative of such a victim or witness who is a minor, or a

1 relative of a homicide victim.

2 Section 6. Consultation with victim of felony offense.

3 The prosecuting attorney in a criminal case shall consult
4 with the victim of a felony offense or, in the case of a
5 minor child victim or homicide victim, with the family of
6 the victim in order to obtain the views of the victim or his
7 family regarding the disposition of the case, including:

8 (1) dismissal of the case;

9 (2) release of the accused pending judicial
10 proceedings;

11 (3) plea negotiations; and

12 (4) pretrial diversion of the case from the judicial
13 process.

14 Section 7. Separate waiting area. Victims and other
15 prosecution witnesses must be provided, prior to court
16 appearance, with a waiting area that is separate from all
17 other witnesses and persons who have arrived to attend the
18 court proceeding.

19 Section 8. Property return. A law enforcement agency
20 or prosecuting attorney shall promptly return any of the
21 victim's property held for evidentiary purposes, unless
22 there is a compelling law enforcement reason for retaining
23 such property.

24 Section 9. Notification to employer or creditor. (1)

25 The law enforcement agency or prosecuting attorney in a

1 criminal case shall assist a victim or witness who requests
2 assistance in informing an employer that the need for victim
3 and witness cooperation in the prosecution of the case may
4 necessitate absence of the victim or witness from his place
5 of employment.

6 (2) A law enforcement agency or prosecuting attorney
7 shall assist a victim or witness who, as a direct result of
8 a crime or because of cooperation with the law enforcement
9 agency or prosecuting attorney, is subjected to serious
10 financial strain. Such agency or prosecuting attorney shall
11 assist the victim or witness by explaining to creditors the
12 reason for such serious financial strain.

13 Section 10. Training in victim assistance. The Montana
14 law enforcement academy shall offer education and training
15 in victim assistance to law enforcement officers and
16 prosecuting attorneys and shall provide such education and
17 training in its regular curriculum, so that victims may be
18 properly assisted.

19 Section 11. Duty of attorney general. The attorney
20 general shall assure that victims and witnesses of crime
21 receive fair and proper treatment in the criminal justice
22 system. In addition, the attorney general shall assure that
23 victims and witnesses are provided important services and
24 assistance as required under [this act].

25 Section 12. Rulemaking authority. The attorney general

1 shall adopt rules necessary to implement the provisions of
2 this act and to assure compliance by law enforcement
3 agencies, prosecuting attorneys, and others who may be
4 subject to the requirements of this act.

5 Section 13. No cause of action for damages. Nothing in
6 [sections 1 through 12] may be construed to create a cause
7 of action for damages against the state or one of its
8 political subdivisions.

9 Section 14. Effective date. This act is effective on
10 passage and approval; however, no rules adopted pursuant to
11 section 12 may take effect until October 1, 1985.

-End-

CHAIRMAN--MAZUREK, JOE
NORMAL SCHEDULE==>

SITE: OLD SUPREME COURT ROOM

DAYS: M-TU-W-TH-F

TIME: 10:00 A.M.-12 NOON

SECRETARY-STALEY, CINDY

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0424	2/15	2/22		PASS AS AMENDED		2/23
WILLIAMS, BOB			PRESCRIPTIVE EASEMENT NOT ACQUIRED BY RECREATIONAL USE OF LAND OR WATER			
SB0429	2/16	2/21		PASS AS AMENDED		2/23
PINSONEAULT, R.J. (DICK)			ADOPT A LAW TO CURTAIL ORGANIZED CRIME			
SB0433	2/16	2/22		PASS AS AMENDED		2/22
NORMAN, BILL			LIMIT LIABILITY OF MEDICAL EXAMINERS PERFORMING AUTOPSIES FOR FBI			
SB0439	2/16	XXX	2/23	TABLED without hearing		2/22
GALT, JACK E.			RESERVED WATER RIGHTS CLAIM APPLICATION			
SB0446	2/18	2/21		PASS AS AMENDED		2/23
HAGER, TOM			PROVIDES FOR THE OFFENSE OF UNLAWFUL APPROPRIATION OF RETAILER PROPERTY			
SB0449	2/19	2/22		PASS AS AMENDED		2/23
REGAN, PAT			CREATES CRIME OF DOMESTIC ABUSE; REQUIRES ARREST FOR ITS VIOLATION			
SB0451	2/20	2/21		PASS AS AMENDED		2/23
MAZUREK, JOSEPH P.			PROVIDES FOR THE FAIR AND PROPER TREATMENT OF CRIME VICTIMS AND WITNESSES			
SB0453	2/20	2/22		PASS AS AMENDED		2/23
VAN VALKENBURG, FRED			REGULATE WIRETAPS			
SB0459	2/21	2/25		TABLED		2/25
FULLER, DAVID E.			STRENGTHENING REQUIREMENTS FOR UNINSURED MOTORIST COVERAGE			
SJ0007	1/14	1/25	2/06	ADVERSE REPORT		2/4
SHAW, JAMES N.			JOINT RESOLUTION CALLING FOR A 10 PERCENT REDUCTION IN THE STATE BUDGET			
SJ0019	2/08	2/14	2/14	DO PASS		2/15
MANNING, RICHARD E.			URGING REPEAL OF FEDERAL LAW THAT LIMITS POLITICAL ACTIVITY FED. WORKERS			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 21, 1985

The thirty-sixth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on February 21, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 412: Senator Ed Smith, sponsor of SB 412, presented written testimony to the committee (Exhibit 1). In addition, Senator Smith presented a letter which he had received concerning the subject matter of this bill and requested that this letter be distributed to the committee members (Exhibit 2).

PROPOSERS: Representative Dennis Nathe testified in support of the bill. He stated in these cases, you deal with denial. It's a psychological problem, and they do not believe they have a problem. As our laws stand now, for each offense they are convicted, it carries a penalty of 20 years in prison. He believes we are sending a mixed signal to the public. Their perception of justice is there should be some time served. This tells these people they cannot get off scot-free if they go to a mental health center. North Dakota has a mandatory six months in the state penitentiary. Representative Nathe also testified he has several bills coming from the House that deal with different aspects of this problem.

OPPOSERS: Pastor William Rizer, of St. John's Lutheran Church in Helena, testified on behalf of the Montana Association of Churches. He explained he had the unenviable position of opposing this bill because the Montana Association of Churches is on record as being opposed to mandatory sentencing. He said we could talk about individual cases and how gruesome they are. The natural human tendency is to seek retribution in an effort to get back. At the same time, on the basis of justice, we would be doing a disservice by tying the hands of the judges and not allowing them to respond to the individual cases as they arise.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock addressed Representative Nathe and stated there is no question these things are heinous, and there is a lot of this that is incest within families. Senator Blaylock stated these are sick individuals. He questioned whether he thought that by putting them in jail for 30 days we will help that person or

CONSIDERATION OF SB 392: Senator Kermit Daniels, sponsor of SB 392, testified this bill arises out of his bill last session wherein he had a point system which would wind up by a guy's being hung or put to death by injection of some suitable drug. He stated they have a situation at the Montana State Prison where guards in the maximum security portion of the prison have been stabbed, shot at, and every conceivable assault perpetrated against them. When the prisoner has consecutive life sentences or is awaiting the death penalty, there is not a practical thing the county attorney can do against these people that are constantly in trouble and whose rehabilitation is hopeless.

PROPOSERS: Senator Daniels stated his county attorney, Ted Mizner, was unable to attend but supported the bill.

OPPOSERS: Pastor Rizer, representing the Montana Association of Churches, testified they oppose this bill on the same grounds as the other bills heard today. John Ortwein, representing the Montana Catholic Conference, testified they oppose the bill for the reasons previously stated regarding the other bills. Roy Andes, representing the ACLU, testified the best reason to think of for keeping these people alive is the death penalty does not work. Prison homicides do not go down in death penalty states. It cheapens societal respect for human life. He also felt there were several constitutional problems with the bill and referred to page 1, line 14, the word "or." He has not been able to find a definition of persistent felony offender. The population on which this penalty is imposed is limited to prison inmates. Others that would fit into the same category might be on parole. He referred to page 1, line 19, and stated constitutionally you may not impose the death penalty in a discretionary manner. He believes the entire scheme, even eliminating the other problems, may not pass constitutional muster. One deliberate homicide with one aggravated assault will invoke the death penalty.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on SB 392 was then closed. Chairman Mazurek then turned the gavel over to Vice Chairman Daniels in order that he might present the next bill to the committee.

CONSIDERATION OF SB 451: Senator Joe Mazurek, sponsor of the bill, testified he sponsored this bill at the request of District Judge Henry Loble, who was unable to attend the hearing. This is currently adopted in the federal statute, although it is much more broad. This requires the county prosecutor to make victims of crimes aware of services that

may be available to them. This requires them to advise the victims of scheduling of criminal actions. A victim is to be contended with. Senator Mazurek suggested section 7 be deleted because as a practical matter, we could not afford this. This provides for prompt return of property. It requires the county attorney, if necessary, to talk to an employer of a witness or victim. Senator Mazurek further suggested the effective date was unnecessary.

PROPOSERS: Karl Englund, representing the Montana Trial Lawyers Association, testified under general principles, people that are harmed as a result of actions of others ought to be involved in the process and should be fully compensated. This is a way of making sure the victim of a crime is at least included within the process and understands the process and why the things occur as they do. They recognize we treat victims to a lesser degree than the offenders. The knee-jerk way we deal with that is taking away some of their constitutional rights. This bill is a good first step in the right direction. It addresses the problems as a separate notion from the notion of how we have to treat defendants. Mr. Englund felt it was an excellent bill. Pastor William Rizer, representing the Montana Association of Churches, testified they have a position dealing with victims of crimes expressing their concern for victims of crime. He stated on the surface, it appears they are in favor of this bill.

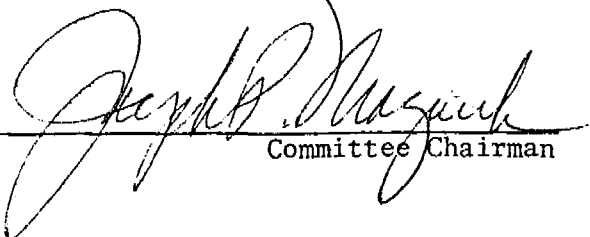
OPPOSERS: None.

CLOSING STATEMENT: None.

Hearing on SB 451 was closed. Vice Chairman Daniels returned the gavel to Chairman Mazurek.

ACTION ON SB 352: Senator Brown moved SB 352 be recommended DO PASS. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned.


Committee Chairman

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 022185

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 23, 1985

The thirty-ninth meeting of the Senate Judiciary Committee was called to order at 12:10 p.m. on February 23, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

ACTION ON SB 392: Senator Shaw moved SB 392 be recommended DO PASS. Senator Towe asked Senator Daniels if he had anything to say about the constitutional problem raised. Senator Daniels responded he sees no constitutional problem with this bill. Senator Towe stated one of the precepts of the constitution is the death penalty is arbitrary. He also had concerns that the word "persistent" is not defined. Mr. Petesch stated we have that classification in the current law. Senator Daniels moved to amend SB 392 as follows:

Page 1, line 19.
Following: "inmate"
Strike: "may"
Insert: "must"

The motion failed (see roll call vote attached as Exhibit 1). Chairman Mazurek then reverted to Senator Shaw's motion that SB 392 be recommended DO PASS. The motion carried with Senators Blaylock, Brown, Mazurek, and Towe voting in opposition.

ACTION ON SB 364: Senator Pinsoneault distributed proposed amendments to the bill (Exhibit 2). He stated the bill as originally drafted only included Schedule I drugs from our criminal code. He felt that was too restrictive and left the bill with practically no meaning at all. Schedules I and II would encompass popular street drugs. Senator Pinsoneault suggested this bill as a preventive piece of legislation to give notice to those that come to Montana, if you deal in drugs and someone dies because of it, you might be put to death. He thinks the preventive aspect of this bill is very important, but hopes it will never be used. Senator Towe asked if Schedules I and II include most drugs except marijuana. Senator Pinsoneault responded those that have an accepted medical use are on Schedules III, IV, and V. Those that create a drug dependency are on Schedule II. Senator Pinsoneault moved the proposed amendments be adopted. The motion carried unanimously. Senator Pinsoneault moved SB 364 be recommended DO PASS AS AMENDED.

Senate Judiciary Committee
Minutes of the Meeting
February 23, 1985
Page 5

Mr. Roberts stated no. Senator Towe moved as a substitute motion that SB 429 be recommended DO NOT PASS. The motion failed (see roll call vote attached as Exhibit 6). Mr. Petesch reminded the committee it needed to consider the Secretary of State's amendments before voting on the bill. Senator Pinsoneault moved the amendments be adopted. The motion carried unanimously. Senator Pinsoneault then moved SB 429 be recommended DO PASS AS AMENDED. Senator Towe asked if the committee wished to address the question of unlawful debts. The motion to recommend the bill DO PASS AS AMENDED carried with Senators Blaylock, Daniels, and Towe voting in opposition.

ACTION ON SB 451: Proposed amendments to SB 451 were distributed to the committee (Exhibit 7). The effect of these amendments is to delete Sections 7, 12, and 14. Senator Galt moved the committee adopt the amendments. The motion carried unanimously. Senator Brown moved SB 451 be recommended DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON SB 449: Proposed amendments to SB 449 were distributed to the committee (Exhibit 8). Senator Towe asked what will happen if the officer picks both parties up and put them both in jail. Another thing that is bothersome to him is he is concerned some wives will learn they can use this as a big club. Senator Blaylock stated he thinks the bill is too broad. Senator Towe stated he likes the idea this bill is trying to get at. Mr. Petesch stated Senator Regan suggested removing the immunity section. He further stated facially this bill is fine, but in reality, all of these arrests are going to be warrantless. The case of Payton v. New York stated warrantless arrests in the home were found to be unconstitutional, so the amendment concerning exigent circumstances was proposed. Senator Blaylock stated there is no doubt that it is a very difficult thing and most of the time it is the woman, but he hates the idea of leaving that on the officer and saying he has to make the decision because there are times when they are both at fault. He thinks what will happen is just what was said: the officer, to protect himself, will arrest both parties. Senator Brown stated it is hard to vote against this bill, but it is not a very good bill. Senator Towe stated the committee could put in the exigent circumstances and cut out the rest of the bill. A complaint along with probable cause to support it from a family member constitutes exigent circumstances for making an arrest. What bothers him more than anything else is it won't take long for the woman to call the police and to get her husband put in jail. Senator Mazurek asked if by statute we can make it presumptive that it is exigent. Mr. Petesch stated if you have a warrant, there is no problem, but if you are making a warrantless arrest in the home, you have to have those exigent circumstances. Senator Towe suggested changing the word "shall" to "may" and putting in the exigent circumstances. Senator Towe moved the amendments attached as Exhibit 8. The

PROPOSED AMENDMENTS TO SB 451:

1. Title, lines 7 through 9.
Following: "WITNESSES,"
Strike: remainder of line 7 through "DATE" on line 9
2. Page 5, lines 14 through 18.
Strike: Section 7 in its entirety
Re-number: subsequent sections
3. Page 6, line 25 through line 4, page 7.
Strike: Section 12 in its entirety
Re-number: subsequent sections
4. Page 7, lines 9 through 11.
Strike: Section 14 in its entirety

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 022385
BILL NO. SB 451

STANDING COMMITTEE REPORT

February 23 1985

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 451

first reading copy (white)
color

PROVIDES FOR THE FAIR AND PROPER TREATMENT OF CRIME VICTIMS AND WITNESSES

Respectfully report as follows: That SENATE BILL No. 451

be amended as follows:

1. Title, lines 7 through 9.
Following: "WITNESSES,"
Strike: remainder of line 7 through "DATE" on line 9
2. Page 5, lines 14 through 13.
Strike: Section 7 in its entirety
Reinsert: subsequent sections
3. Page 6, line 25 through line 4, page 7.
Strike: Section 12 in its entirety
Reinsert: subsequent sections
4. Page 7, line 6.
Following: "through"
Strike: "12"
Insert: "10"
5. Page 7, lines 9 through 11.
Strike: Section 14 in its entirety

AND AS AMENDED

DO PASS

DO NOT PASS

Senator Joe Mazurek

Chairman.

(To be kept current -- post bills when entering being heard or leaving committee.)

Form CS-32

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB 392	3/7/85	3/22/85	3/22/85						3/22/85 AS AMENDED
SB 411	3/7/85	3/22/85	3/22/85					3/22/85	
SB 412	3/7/85	3/25/85	3/25/85					3/25/85	
SB 414	3/7/85	3/20/85 3/21/85	3/21/85				3/21/85		
SB 418	3/7/85	3/26/85	3/27/85						3/26/85
SB 421	3/7/85	3/26/85		(Table bill 3/26/85)					
SB 424	3/7/85	3/26/85	3/27/85						3/26/85
SB 433	3/7/85	3/25/85	3/25/85				3/25/85		
SB 435	3/7/85	3/26/85	3/27/85						3/26/85
SB 449	3/7/85	3/21/85 3/28/85	3/28/85					3/28/85	
SB 451	3/7/85	3/25/85	3/25/85					3/25/85	
SB 453	3/7/85	3/21/85 3/27/85	(Tabled 3/27/85)						
SB 105	3/18/85	(re-referred back to committee)				Re-considered 3/19/85 and passed out with BE CONCURRED IN recommendation 3/19/85			
SB 230	3/18/85	(re-refer back to committee)				Re-considered 3/19/85 and passed out with BE CONCURRED IN recommendation 3/19/85			
SB 446	3/23/85	3/27/85 3/28/85	3/28/85					3/28/85	
SB 319	3/25/85	3/28/85	3/28/85				3/28/85		

1 SENATE BILL NO. 451

2 INTRODUCED BY MAZUREK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FAIR
5 AND PROPER TREATMENT OF VICTIMS AND WITNESSES IN THE
6 CRIMINAL JUSTICE SYSTEM; REQUIRING THE PROVISION OF SERVICES
7 AND ASSISTANCE TO CRIME VICTIMS AND WITNESSES;--GRANTING
8 RULEMAKING--AUTHORITY--TO--THE--ATTORNEY--GENERAL;--AND--PROVIDING
9 AN--IMMEDIATE--EFFECTIVE--DATE."

10
11 WHEREAS, without the cooperation of victims and
12 witnesses, the criminal justice system would cease to
13 function; yet with some exceptions, these individuals are
14 either ignored by the criminal justice system or simply used
15 as a means to identify and punish offenders; and

16 WHEREAS, all too often the victim of a serious crime is
17 forced to suffer physical, psychological, or financial
18 hardship, first as a result of the criminal act, and then as
19 a result of contact with a criminal justice system
20 unresponsive to the real needs of such victim; and

21 WHEREAS, while the defendant is provided with counsel
22 who can explain both the criminal justice process and the
23 rights of the defendant, the victim or witness has no
24 counterpart and is usually not even notified when the
25 defendant is released on bail, the case is dismissed, a plea

1 to a lesser charge is accepted, or a court date is changed;
2 and

3 WHEREAS, the victim and witness who cooperate with the
4 prosecutor often find that they must share the pretrial
5 waiting room with the defendant or his family and friends;
6 and

7 WHEREAS, the victim may lose valuable property to a
8 criminal only to lose it again for long periods of time to
9 law enforcement officials until the trial, and sometimes
10 until all appeals are over; and many times the property is
11 damaged or lost, which is particularly stressful for the
12 elderly or the poor; and

13 WHEREAS, the majority of serious crimes fall under the
14 jurisdiction of state and local law enforcement agencies.

15 THEREFORE, the Legislature of the State of Montana
16 finds it appropriate to provide for the fair and proper
17 treatment of crime victims and witnesses in the criminal
18 justice system.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Purpose. The legislature declares that the
22 purposes of [this act] are to:

23 (1) protect the role of crime victims and witnesses in
24 the criminal justice process;

25 (2) assure that victims and witnesses of crime receive

1 fair and proper treatment from law enforcement agencies and
2 prosecutors; and

3 (3) provide a standard of conduct governing the
4 treatment of victims and witnesses in criminal cases.

5 Section 2. Services to victims of crime. Law
6 enforcement personnel shall assure that a victim of a crime
7 routinely receives emergency social and medical services as
8 soon as possible and that such victim is given information
9 on the following:

10 (1) the availability of crime victim compensation;

11 (2) community-based victim treatment programs;

12 (3) the role of the victim in the criminal justice
13 process, including what he can expect from the system, as
14 well as what the system expects from the victim; and

15 (4) stages in the criminal justice process of
16 significance to a crime victim and the manner in which
17 information about such stages may be obtained.

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20 shall routinely provide a victim or witness information on
21 the availability of services to protect the victim or
22 witness from intimidation.

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24 practicable, the prosecuting attorney shall notify a victim
25 or witness of any scheduling changes that may affect the

1 appearance of the victim or witness at a criminal justice
2 proceeding that he is scheduled to attend.

3 (2) For the purpose of providing notification, the
4 prosecuting attorney shall have available a system for
5 promptly alerting a victim or witness that a scheduling
6 change has been made.

7 Section 5. Prompt notification to victims and
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10 current address and telephone number must receive prompt
11 advance notification, if possible, of proceedings relating
12 to his case, including:

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15 judicial officer;

16 (c) the release of the accused pending judicial
17 proceedings; and

18 (d) proceedings in the prosecution of the accused,
19 including entry of a plea of guilty, the setting of a trial
20 date, the sentencing schedule, the sentence imposed, the
21 term of imprisonment, if imposed, and the release of the
22 accused from imprisonment.

23 (2) A person entitled to notification under subsection
24 (1) must be a victim or witness of a felony offense, a
25 relative of such a victim or witness who is a minor, or a

relative of a homicide victim.

Section 6. Consultation with victim of felony offense. The prosecuting attorney in a criminal case shall consult with the victim of a felony offense or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or his family regarding the disposition of the case, including:

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criminal case shall assist a victim or witness who requests assistance in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from his place of employment.

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Section 10. Duty of attorney general. The attorney general shall assure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. In addition, the attorney general shall assure that victims and witnesses are provided important services and assistance as required under [this act].

~~Section 12. Rulemaking authority. The attorney~~

1 ~~general---shall---adopt---rules---necessary---to---implement---the~~
2 ~~provisions-of-this-act---and---to---assure---compliance---by---law~~
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5 Section 11. No cause of action for damages. Nothing in
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-End-

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, March 25, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with Rep. Krueger arriving later during the meeting.

CONSIDERATION OF SENATE BILL NO. 451: Senator Joe Mazurek, Senate District #23, sponsor of this bill, testified. This bill includes what is similar to a portion of the Federal Victims and Witnesses Act on the Montana level. Senator Mazurek said that Judge Henry Loble brought this to his attention, and it is something that Judge Loble has been practicing since he was elected as a district judge. The bill just makes an effort to make victims and witnesses aware of what goes on in the criminal process. It would keep the victim of a crime or witnesses involved in a crime aware of what is going on in the process. They would be consulted with respect to sentences and other things. Everything that is set forth in this bill is new and he explained the sections of the bill in fuller detail. Senator Mazurek feels this is a good bill, and he feels that victims and witnesses should be entitled to know what is going on in the process.

PROPOSERS:

Judge Henry Loble, district court judge from the 1st Judicial District in Helena, said that since he has been a judge, he has been practicing this -- he consults the victim before the sentence is implemented giving the victim the opportunity for input. He doesn't feel that the judge can understand what proper sentence should be given to that person until the judge hears from the victim. To his surprise, he found that he was not the only one interested in this aspect of criminal justice. He said that President Reagan's Task Force on the Victims of Crime is a very interesting document. The federal government has on the books a law very similar to SB 451 only that the federal law goes considerably further. It is called the Victims and Witnesses Protection Act of 1982. He said that many of us who have never been victims of a crime don't realize the trauma that a victim goes through. He feels that they are entitled to know what is happening in the system with regard to the crime they were involved in.

There being no further proponents, Chairman Hannah requested any opponents to testify.

OPPOSERS:

Robert Deschamps, Missoula County Attorney, representing the Montana County Attorney's Association, testified as being partially in opposition to this bill. He said that while he

is sympathetic to the needs of victims and witnesses, he said there is a real problem with trying to keep all those people apprised of all the things that this bill would mandate. He said that if this legislation passed, one more person would have to be hired in his office to take care of this. He pointed out that each time a pre-sentence investigation is ordered, there is a statement obtained from the victim of which information is put into the report and made available to the judges. Although he feels that the idea of the bill is good, he doesn't not support the mandatory measure of it.

Harriet Riley, speaking on behalf of the Missoula County Attorney secretarial staff, feels that it would be humanly impossible to be required to contact each of the victims and witnesses of crimes. She feels the process of contacting victims and witnesses is presently adequate.

There being no further opponents, Senator Mazurek closed. He said that the bill only applies to those people who want to take the time to give the county attorney their names and addresses in felony cases who wish to be apprised of the criminal proceedings of the particular case. He feels the concept is good and urged the committee to support it.

The floor was opened to questions from the committee.

Rep. O'Hara asked if there is a distinction between a major felony and a felony. Senator Mazurek said that a felony is a felony.

In response to a question with regard to section 11 asked by Rep. Addy, Senator Mazurek said this language is modeled after the federal act. He doesn't feel the county attorney should be held liable if he didn't contact a victim or witness due to honest oversight.

Rep. Addy asked how mandatory the bill is. Senator Mazurek said that if the county attorney didn't contact the person, he supposes that someone could claim that the county attorney is guilty of malfeasance in office.

Rep. Eudaily asked if the real thrust of the bill is for victims, and wouldn't it cut down a lot of work for the county attorneys if witnesses were deleted? Judge Loble feels that the victim is the more important part; however, he does think the witnesses should also have their rights protected.

In response to a question asked by Rep. Miles, Senator Mazurek said the rule-making authority was excluded because they felt it would save a little cost. He said there really wasn't a strong feeling about it one way or the other.

There being no further questions, the hearing was closed on SB 451.

CONSIDERATION OF SENATE BILL NO. 433: Senator Bill Norman, Senate District #28, sponsor of SB 433, testified. Senator Norman said SB 433 relates to unexplained death. More exactly, it relates to forensic pathology which relates to crime. He said the material on page 2 of the bill relates to the liability of the forensic pathologist. This has nothing to do with malpractice -- it is a matter of authority or jurisdiction. He said that the FBI has no device to order an autopsy -- certainly not to order a state forensic pathologist to do so. But, deaths do occur under federal jurisdiction, so they ask the forensic pathologist to do the autopsy which will provide an explanation for the cause of death. In so doing, the coroner is not included although he has to order the forensic pathologist to perform the autopsy. There remains a question of "who is liable?"

Chris Tweeten, assistant attorney general for the State of Montana, testified as a proponent. He said that at the request of the medical examiners, this legislation was proposed. The bill doesn't really do anything different from current law other than expand the protection of medical examiners into areas where the jurisdiction lies in the federal government as opposed to jurisdiction in the coroner's system.

There being no further proponents or opponents, Senator Norman closed.

The floor was opened to questions.

Rep. Keyser asked Senator Norman if he knew of another part of the law that defines medical examiner so we know exactly what type of medical examiner we are talking about. This may be too broad and covers perhaps other medical examiners that you don't intend to be covered. Mr. Tweeten said that Chapter 3, Title 44 does define the term "medical examiner". It is possible that if a pathologist were not a forensic pathologist and was called in to conduct an autopsy, it could be argued that he is not a medical examiner. He feels that this would be a highly technical argument.

Rep. Gould asked Mr. Tweeten under what circumstances could a medical examiner be sued. The medical examiner informed Mr. Tweeten that there are only two situations in which pathologists can get into that type of problem. One is where he does not conduct his autopsy in accordance with a reasonable medical stand. This bill doesn't address that problem. The other is a situation where the family of the deceased or whoever might be left an estate might bring action challenging the authority of the coroner or medical examiner who conducted the autopsy in the first place.

EXECUTIVE SESSION:

ACTION ON HJR 44: Rep. D. Brown moved that HJR 44 DO PASS. The motion was seconded by Rep. Bergene. Rep. Gould requested that action on the bill be postponed. He said the Youth Court Justice did the same thing two years ago and he wants to check it out further.

Rep. Hannah said he would like to act on the bill today but the standing committee report will be held depending on what Rep. Gould finds out. The question was called, and the motion carried unanimously.

ACTION ON SENATE BILL NO. 433: Rep. Gould moved that SB 433 BE CONCURRED IN. The motion was seconded by Rep. Miles and discussed. The question was called, and the motion carried unanimously. Rep. Gould agreed to carry the bill on second reading.

ACTION ON SENATE BILL NO. 451: Rep. O'Hara moved that SB 451 BE CONCURRED IN. The motion was seconded by Rep. Addy and discussed. Rep. Hammond stated that he did not like the bill. He feels that it will create a nightmare for county attorneys by requiring them to notify all witnesses and victims in a criminal case.

Rep. Keyser moved that any reference made to "witnesses" throughout the bill be stricken so that it would just apply to "victims". Rep. O'Hara seconded the motion. Rep. Hannah said he would vote against this particular amendment because he feels that witnesses should also be notified of the court proceedings. He said that it is not only a courtesy to notify these people but only fair. He doesn't see where it would present an unusual burden to these people to be required to notify both witnesses and victims of crimes.

Rep. Addy doesn't feel that it is necessary that witnesses be notified. Rep. Keyser pointed out that when he was involved in law enforcement, the county attorney would notify those witnesses of date changes, etc. He feels that any good county attorney would do this anyway in order not to provoke his witnesses. In response, Rep. Hannah said that as long as they are doing this, witnesses should be left in.

Rep. Mercer didn't support the amendment. He thought it would be better to request that witnesses and victims leave their names and addresses if they so wish to be contacted. He further stated that he feels it is the victim's right to know when the offender has been arrested. Rep. Eudaily also feels this will be a burden on officers.

(Rep. Krueger appeared at the meeting.)

The question was called, and Rep. Keyser's motion failed on a

voice vote.

Rep. Addy moved to amend page 4, following line 13, by striking subsection (b) in its entirety. The motion was seconded by Rep. Mercer and carried unanimously. Rep. Addy further moved that SB 451 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Brown.

Rep. Mercer moved to amend page 4, line 9 following "who" by inserting "requests notification and". Rep. Hannah spoke against this amendment, and said it allows the county attorney to weasel out of this whole law. He again said that he doesn't feel it will create an undue hardship on anybody. Rep. Hammond seconded the motion, and it failed on a voice vote. Rep. Addy further moved that SB 451 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Gould. Rep. Mercer moved a further amendment on page 3, line 7 by striking "routinely" and on page 3, line 20 by striking "routinely". He doesn't feel this language adds anything. The motion was seconded by Rep. Brown and carried with Rep. Bergene dissenting. Rep. Addy moved that SB 451 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried on a voice vote with Rep. Hammond dissenting. Rep. Addy agreed to carry the bill on the House floor.

ACTION ON SENATE BILL NO. 412: Rep. Mercer moved that SB 412 BE CONCURRED IN. The motion was seconded by Rep. Darko and further discussed.

Rep. Mercer feels that if someone lacks the mental capacity to be convicted of an offense, that is one thing -- but if he/she have enough mental capacity to be convicted, then a judge ought to be able to sentence him/her. Rep. Mercer moved to delete on page 4, line 2 following "(7)" the word "Except" through "IF" because that is the section which removes the mandatory sentence. Furthermore, he wished to include in the bill that section 46-18-222 does not apply to the first 30 days of such imprisonment. He further wished to add the rape statute, §45-5-503 following §45-5-502(3), on line 5 of page 4. Furthermore, he wished to strike on page 4, lines 6 and 7 "if" through "old" because the reference to under 16 years old has moved up on lines 2 and 3. Therefore, it applies to any victim less than 16 years old. The amendments are really aimed at a person who gets a two-year deferred, two-year suspended, five-year deferred, five-year suspended sentence, commented Rep. Mercer. If the Court suspends a sentence, at least 30 days of it ought to be served in jail. The motion was seconded by Rep. Gould. The question was called on the motion to amend, and it carried unanimously. Rep. Mercer further moved that SB 412 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried unanimously. Rep. Nathe will carry the bill on the floor.

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL NO. SB 116 (Sen. Aklestad);
 SB 412 (Sen. Smith);
 SB 433 (Sen. Norman);
 SB 451 (Sen. Mazurek);
 SPONSOR HJR 44 (Rep. Winslow)

DATE March 25, 1985

NAME (please print)	REFERENCE REPRESENTING	SUPPORT	OPPOSE
Robert L. Deschamps III	Mont. Co. Atty. Assn.	116 ✓	451 ✓
Ed McLean	" "	116 ✓	
Scott Graham	Missoula Police Dept.	116 ✓	
Harriett Riley	Missoula Co. Atty.		451 ✓
Gerry M. Higgins	Golden Valley Co. Atty.	116 ✓	
John L. Pratt	Montana County Attorneys Assoc	116 ✓	
D. Gregory Smith	Canal College Faculty		
Kathleen O'Connor	" "		
Chris D. Guntens	Attorney General	433	
Ed D. Guntens	Stillwater Co. Atty.	116 ✓	
John Flynn	Broadwater Co. Atty.	116 ✓	
Jim Jensen	MT. Magistrates Assn.	433 116	
Ed Smith	Senary President	412 ✓	
D. Morris	MALCO	116	
Robert M. McGarity	Butte-Silver Bow Co. Atty.	116 ✓	
Jan T. Zondy	mt. judicial assn	433	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

HOUSE

March 25 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 451

Third reading copy (Blue color)

PROVIDES FOR THE FAIR AND PROPER TREATMENT OF CRIME VICTIMS
AND WITNESSES

Respectfully report as follows: That Senate Bill No. 451

be amended as follows:

1. Page 3, line 7.
Strike: "routinely"
 2. Page 3, line 20.
Strike: "routinely"
 3. Page 4, following line 13.
Strike: subsection (b) in its entirety.
- Renumber subsequent subsections.

AND AS AMENDED,
BE CONCURRED IN

~~XXXXXX~~

See 3/25

Tom Hannah
REP. TOM HANNAH Chairman.

SENATE BILL NO. 451
INTRODUCED BY MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FAIR
AND PROPER TREATMENT OF VICTIMS AND WITNESSES IN THE
CRIMINAL JUSTICE SYSTEM; REQUIRING THE PROVISION OF SERVICES
AND ASSISTANCE TO CRIME VICTIMS AND WITNESSES;--GRANTING
~~RULEMAKING--AUTHORITY--TO--THE--ATTORNEY--GENERAL;--AND--PROVIDING~~
~~AN--IMMEDIATE--EFFECTIVE--DATE."~~

WHEREAS, without the cooperation of victims and
witnesses, the criminal justice system would cease to
function; yet with some exceptions, these individuals are
either ignored by the criminal justice system or simply used
as a means to identify and punish offenders; and

WHEREAS, all too often the victim of a serious crime is
forced to suffer physical, psychological, or financial
hardship, first as a result of the criminal act, and then as
a result of contact with a criminal justice system
unresponsive to the real needs of such victim; and

WHEREAS, while the defendant is provided with counsel
who can explain both the criminal justice process and the
rights of the defendant, the victim or witness has no
counterpart and is usually not even notified when the
defendant is released on bail, the case is dismissed, a plea

to a lesser charge is accepted, or a court date is changed;
and

WHEREAS, the victim and witness who cooperate with the
prosecutor often find that they must share the pretrial
waiting room with the defendant or his family and friends;
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WHEREAS, the victim may lose valuable property to a
criminal only to lose it again for long periods of time to
law enforcement officials until the trial, and sometimes
until all appeals are over; and many times the property is
damaged or lost, which is particularly stressful for the
elderly or the poor; and

WHEREAS, the majority of serious crimes fall under the
jurisdiction of state and local law enforcement agencies.

THEREFORE, the Legislature of the State of Montana
finds it appropriate to provide for the fair and proper
treatment of crime victims and witnesses in the criminal
justice system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. The legislature declares that the
purposes of [this act] are to:

(1) protect the role of crime victims and witnesses in
the criminal justice process;

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REFERENCE BILL
SB 451

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2 prosecutors; and

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16 significance to a crime victim and the manner in which
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20 shall routinely provide a victim or witness information on
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SB 0451/03

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